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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,246	08/18/2003	Ricardo D. Pau Diaz	21013.00	2992
7590	08/04/2004		EXAMINER	
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. Box 15035 Arlington, VA 22215			CHAMBERS, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/642,246	DIAZ ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Mike Chambers	3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 18 August 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 6-9 is/are rejected.
- 7) Claim(s) 4-5 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ .  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, and 6, 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by McKinney. McKinney discloses

an upright barrier including front and rear sides (12), the front side having a pocket (fig 4- hole for screws (3:66-68) defined therein a cylindrical container having a peripheral wall extending between an open end and closed end (38), the open end having a rim positioned about its periphery an arm extending from the rim (28), the arm having a horizontal portion extending radially outward from the rim for spacing said cylindrical container apart from said barrier (38), and an angled portion (screws/bolts) detachably inserted in said pocket; and means ( item 24 fig 1) for detachably mounting the wastepaper basketball basket upon a vertical support surface; wherein wastepaper directed through said open end both directly and upon rebound from said barrier (fig 1, 2).

As to claim 2 : McKinney discloses a hook attached to the rear side of said barrier (24 fig 1).

As to claims 6: McKinney discloses a plastic material ( 2: 40-45).

As to claim 8 : McKinney discloses a basketball net and backboard ( fig 1).

As to claim 9 : McKinney discloses net apertures ( 38, fig 1).

Also,

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Sutter et al.

Sutter et al discloses

an upright barrier including front and rear sides (23, fig 3), the front side having a pocket (fig 3- hole for screws ) defined therein a cylindrical container having a peripheral wall extending between an open end and closed end (14), the open end having a rim positioned about its periphery an arm extending from the rim (28), the arm having a horizontal portion extending radially outward from the rim for spacing said cylindrical container apart from said barrier (11), and an angled portion (screws/bolts) detachably inserted in said pocket; and means (screws/bolts) for detachably mounting the wastepaper basketball basket upon a vertical support surface; wherein wastepaper directed through said open end both directly and upon rebound from said barrier (fig 1, 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powell in view of Kennedy. Powell discloses the elements of claim 1, however it fails to clearly disclose a front side having a pocket. Kennedy discloses a front side having a pocket (item 5 fig 3). It would have been obvious to one of ordinary skill in the

art at the time of the invention to have employed the mounting device of Kennedy with the apparatus of Powell in order to more easily take down and store the device when the user is finished using the device.

As to claim 2 : Powell discloses a hook (5).

As to claim 3 : Powell discloses a fixed bottom portion (35).

As to claim 8 : Powell discloses a basketball net and backboard ( fig 1).

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powell in view of Kennedy and further in view of Official notice. Official notice is taken that it is well known to use thermoplastic plastic materials and fiberglass in the art. The choice of material used in manufacture is a matter of design choice. The specification provides no unexpected results in using the material selected and as such it is a matter of design choice. It would have been obvious to one of ordinary skill in the art to have selected an appropriate material based on manufacturing and cost considerations.

### ***Allowable Subject Matter***

Claims 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

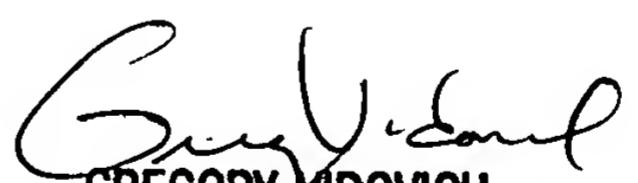
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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244420\*3814359\*1522957  
August 2, 2004



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